

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-1249

UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X
UNITED STATES OF AMERICA,

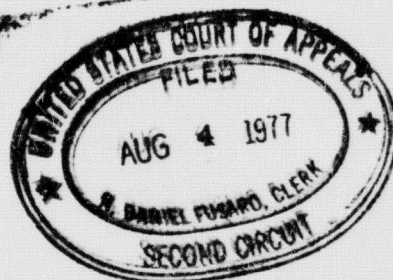
Appellee,

- against -

BARTHOLEMEW BUIGUES, ANGELO PUIG,
IRMA ANES, SUSAN HOROWITZ and
JOHN SAMMARCO,

Defendant-Appellants.
-----X

APPENDIX OF APPELLANT
ANGELO PUIG



PAGINATION AS IN ORIGINAL COPY

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FOR APPENDIX

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0848

PUIG, ANGELO

Case Filed
Mo. Day
08 31 76
05

0864

02

x 0208 1

18:371
18:287

OFFENSES CHARGED
Consp. to commit offenses against U.S.
False claims against U.S. Agency.

1
2,3

KEY DATES & NOTES

ARRESTED

8-31-76

9-9-76

11-24-76

12-4-76

1-17-77

9-9-76

11-24-76

12-4-76

MAGISTRATE

Jeremy G. Epstein
791-0036

Ernest H. Hammer
120 Broadway
New York, N.Y. 349-7380

Buigues, et al.

8-31-76 Filed indictment.
9-9-76 Deft. (Atty. Present) pleads not guilty. Deft. ordered P/P and R.O.R. Case assigned to Pollack, J...Haight, J.
09-10-76 Filed notice of appearance of atty. E. H. Hammer.
09-23-76 Pre-trial before Pollack, J.
11-24-76 Deft. (atty. Ernest H. Hammer) hearing held re: atty. E.H. Hammer presenting all three defts. Record ordered sealed by the Court, Pollack, J.
11-29-76 Jury trial begun before Judge Pollack.
11-30-76 Trial cont'd.
12-1-76 Trial cont'd.
12-2-76 Trial cont'd.
12-3-76 Trial cont'd.
12-4-76 Trial cont'd and concluded. Deft. found guilty on cts. 1,2,3. Bail set at \$15,000. P.R.B. to be posted by close of business on 12-3-76. Date of sent. 1-17-77 at 10AM. P.S.I. ordered. Pollack, J.

2 10-28 E 1

IV. PROCEEDINGS (continued)

PAGE TWO

V. EXCLUDABLE DELAY

LETTER CODES

Excludable Periods of Excludable Delay Per 18 USC § 3161(h)

A Examination or hearing for mental or physical capacity, 18 USC 424a

B NARA Examination, 18 USC 2902

C Sign or receive from other charges

D Preliminary Address

E Hearings on pretrial motions

F Transfer from other district, per F.R.C.P. Rules 20, 21 & 40

G Detention, Motion to adjourn, under advisement, per 18 USC 3161(h)(1)(G)

H Miscellaneous Proceedings: Probation or Parole Revocation, Deportation, Extradition

I Probation or Parole Agreement

M Unavailability of defendant or witness

N Period of absence of defendant, incompetency of defendant to stand trial

O Period of NARA Commitment or Treatment

P Superseding indictment and/or new charges

Q Defendant awaiting trial or co-defendant under no severance has been granted

R Continuances Granted per 3161(h)(1) in the event of continuance of trial, per 3161(h)(1)(R)

S Time between jury and trial with grand jury

T Grand Jury in the event of continuance of trial, per 3161(h)(1)(T)

Filed \$15,000. Unsecured Personal Recognizance Bond.
 Filed one envelope ordered sealed. Pollack, J.
 Filed Judgment (atty. Ernest H. Hammer) Cts. 1,2,3:
 2 yrs. impr. ea. ct. conc. SERVE 2 mos. remainder
 of bal of sent. E.S.S. 2 yrs. prob. 18:3651.
 Deft. cont'd. on bail until 1-24-77, etc. Pollack, J.
 issued all copies.
 Filed notice of appeal from judgment of 1-17-77.
 Mailed copies
 Filed J&C and marshal's return, deft. delivered to:
 M.C.C. N.Y.C. 1-24-77.

Filed Transcript of record of proceedings 11/29, 30, 1976

12/1, 2, 1976

12/3, 6, 1976

Filed Notice that Supplemental record on appeal has been certified and transmitted to USCA, 2nd Circuit.

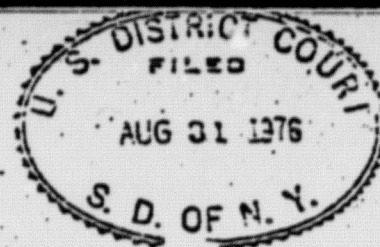
Filed TRANSCRIPT RECORD OF PROCEEDINGS DTD: 1/17/77

Filed transcript of record of proceedings, dated 1-17-77

FINE AND RESTITUTION PAYMENTS

RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA

- v -

BARTHOLOMEW BUIGUES,
ANGELO PUIG, IRMA ANES,
SUSAN HOROWITZ, and JOHN SAMMARCO,
Defendants.

INDICTMENT

76 Cr.

76 CRIM. 086

The Grand Jury charges:

INTRODUCTION

1. In enacting Title 42, United States Code, Section 1751 et seq., The National School Lunch Act, the Congress of the United States empowered the United States Department of Agriculture to provide food to children participating in non-profit school lunch programs.
2. Pursuant to Title 42, United States Code, Section 1761, the United States Department of Agriculture is further empowered to administer Special Summer Food Service Programs for Children, which programs were intended to provide food during the summer to children from areas in which poor economic conditions exist.
3. During July and August, 1975, the Special Summer Food Services Program in New York State was administered by the Food and Nutrition Service of the United States Department of Agriculture. The Food and Nutrition Service would and did enter into agreements with private, non-profit organizations, designated as service institutions under the National School Lunch Act, that undertook to operate food service programs for needy children with funds provided from the United States.

MICROFILM

AUG 31 1976

4. At all times relevant herein, Youth In Government was a non-profit corporation duly organized and existing under the laws of the State of New York, with its principal office at 2176 Amsterdam Avenue, New York, New York.

5. At all times relevant herein, BARTHOLOMEW BUIGUES, the defendant, was chairman of the board of Youth In Government.

6. In July and August, 1975, Youth In Government, pursuant to agreement with the Food and Nutrition Service of the United States Department of Agriculture, operated a Special Summer Food Service Program for Children in the Borough of Manhattan in New York City.

7. During July and August, 1975, ANGELO PUIG, the defendant, was employed as the director of the Special Summer Food Service Program of Youth In Government.

8. During July and August, 1975, IRMA ANES, the defendant, was listed on the books of Youth In Government as its "administrative chief."

9. During July and August, 1975, SUSAN HOROWITZ and JOHN SAMMARCO, the defendants, were listed on the books of Youth In Government as "site monitors".

COUNT ONE

10. From on or about the 1st day of November, 1974, up to and including the 1st day of January, 1976, in the Southern District of New York and elsewhere, BARTHOLOMEW BUIGUES, ANGELO PUIG, IRMA ANES, SUSAN HOROWITZ, and JOHN SAMMARCO, the defendants, unlawfully,

wilfully and knowingly did combine, conspire, confederate and agree together and with each other, and with others to the Grand Jury known and unknown, to defraud the United States and to commit offenses against the United States, to wit, violations of Title 18, United States Code, Section 287.

OBJECTS OF THE CONSPIRACY

11. It was part of said conspiracy that the defendants would and did agree to defraud the United States and a department and agency thereof, to wit, the United States Department of Agriculture, by causing the United States Department of Agriculture to reimburse Youth In Government for work supposedly performed by certain of its employees in the Special Summer Food Services Program, whereas, in truth and in fact, said employees performed little or no work and were not entitled to the salaries paid them.

12. It was further part of said conspiracy that the defendants would and did make and present to the United States Department of Agriculture, a department and agency of the United States, claims upon and against the United States, to wit, "Food and Nutrition Service Reimbursement Vouchers", knowing such claims to be false, fictitious, and fraudulent.

MEANS OF THE CONSPIRACY

13. Among the means by which the defendants would and did carry out the conspiracy were the following:

(a) In June, 1975, BARTHOLOMEW BUIGUES, the defendant, would and did hire IRMA ANES, the defendant, as "administrative chief" of Youth In Government's Special Summer Food Services Program at a salary of \$200 per week.

(b) In June, 1975, BARTHOLOMEW BUIGUES, the defendant, would and did hire SUSAN HOROWITZ and JOHN SAMMARCO, the defendants, as "site monitors" of Youth In Government's Special Summer Food Services Program at salaries of \$110 per week.

(c) While supposedly working as "administrative chief" of the Special Summer Food Services Program, IRMA ANES, the defendant, would and did work full time at Querer, Inc., a day care center located at 391 East 149th Street, Bronx, New York.

(d) While supposedly working as a "site monitor" of the Special Summer Food Services Program, SUSAN HOROWITZ, the defendant, would and did work full time at Arawak Consulting Corporation, 210 East 86th Street, New York, New York at an annual salary of \$12,000 per year.

(e) Although listed as employees of Youth In Government, JOHN SAMMARCO, IRMA ANES and SUSAN HOROWITZ, the defendants, would and did fail to report regularly at their jobs in the Special Summer Food Services Program.

(f) In July and August, 1975, BARTHOLOMEW BUIGUES and ANGELO PUIG, the defendants, although aware that JOHN SAMMARCO, IRMA ANES, and SUSAN HOROWITZ, the defendants, were not working regularly in the Special Summer Food Services Program, would and did cause salary checks to be issued weekly to these individuals.

(g) In July and August, 1975, BARTHOLOMEW BUIGUES and ANGELO PUIG, the defendants, would and did cause a payroll record book to be kept listing the wages and hours of the employees of the Special Summer Food Services Program, in which book it was recorded that JOHN SAMMARCO, IRMA ANES, and SUSAN HOROWITZ each worked seven hours per day, five days per week, for the duration of the Special Summer Food Services Program.

(h) In August, 1975, Youth In Government would and did file claims with the United States Department of Agriculture for expenses incurred in operating its Special Summer Food Services Program, which expenses included the salaries of employees.

OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, the following overt acts, among others, were committed in the Southern District of New York:

1. In or about January, 1975, BARTHOLOMEW BUIGUES and ANGELO PUIG, the defendants, held a meeting at 1920 McGraw Avenue, Bronx, New York, to organize the Special Summer Food Services Program for Youth In Government.

2. In or about May, 1975, BARTHOLOMEW BUIGUES and ANGELO PUIG, the defendants, held a meeting at The Latin Beat, 508 Van Nest Avenue, Bronx, New York, to organize further the Special Summer Food Services Program for Youth In Government.

3. On or about the 27th day of June, 1975, SUSAN HOROWITZ filled out an application for employment in the Special Summer Food Services Program of Youth In Government.

4. From on or about the 7th day of July, 1975, and continuously thereafter up to and including the 16th day of April, 1976, SUSAN HOROWITZ, the defendant, was employed as a staff associate at Arawak Consulting Corporation, 210 East 86th Street, New York, N.Y.

5. During July and August, 1975, IRMA ANES, the defendant, was employed as a bookkeeper and administrative assistant at Querer, Inc., 391 East 149th Street, Bronx, New York.

6. During July and August, 1975, BARTHOLOMEW BUIGUES and ANGELO PUIG, the defendants, wrote weekly salary checks to IRMA ANES, JOHN SAMMARCO, and SUSAN HOROWITZ.

7. In July and August, 1975, IRMA ANES, the defendant, made entries in the payroll book of Youth In Government which stated that IRMA ANES, SUSAN HOROWITZ, and JOHN SAMMARCO had each worked seven hours per day, five days per week, for eight consecutive weeks.

8. On or about the 22nd day of August, 1975, IRMA ANES, the defendant, filed with the United States Department of Agriculture a Food and Nutrition Service Reimbursement Voucher for the Special Summer Food Service Program of Youth In Government for July, 1975.

9. On or about the 29th day of August, 1975, IRMA ANES, the defendant, filed with the United States Department of Agriculture a Food and Nutrition Service Reimbursement Voucher for the Special Summer Food Service Program of Youth In Government for August, 1975.

10. In or about August, 1975, Youth In Government received from the United States Department of Agriculture \$142,747 in payment of its claim for the expenses of the Special Summer Food Services Program for July, 1975.

(Title 18, United States Code, Section 371.)

COUNTS TWO AND THREE

The Grand Jury further charges:

1. Each and every allegation of the Introduction of this Indictment is hereby repeated, realleged, and incorporated by reference in each of Counts Two and Three of this Indictment as though fully set fourth therein.

2. On or about the dates hereinafter set forth, in the Southern District of New York, BARTHOLOMEW BUIGUES, ANGELO PUIG, IRMA ANES, SUSAN HOROWITZ, and JOHN SAMMARCO, the defendants, unlawfully, wilfully, and knowingly would and did make and present and cause to be made and presented to the United States Department of Agriculture, a department and agency of the United States, claims upon and against the United States, to wit, Food and Nutrition Service Reimbursement Vouchers, knowing such claims to be false, fictitious, and fraudulent:

<u>COUNT</u>	<u>DATE</u>	<u>MONTH COVERED BY VOUCHER</u>
2	August 22, 1975	July, 1975
3	August 29, 1975	August, 1975

(Title 18, United States Code, Sections 287 and 2.)

FOREMAN

ROBERT B. FISKE, JR.
United States Attorney

US v Buigues 1
76 Cr. 864
11/9/76 2

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(Pollack, M.)

(In open court; jury present.)

THE COURT: Ladies and gentlemen of the jury:

First, I want to thank you for your careful attention, which has been clearly exhibited. The case is now about to be placed in your hands. You have heard the arguments of counsel as to what each believes has been established or not established in the evidence. Of course, it is for you to say what the evidence was and that will guide your deliberations.

The charges against the five defendants, as set out in the indictment, consist of three counts against each one of the defendants. All are accused of having undertaken or aided and abetted the conduct charged as offenses herein. I will discuss each count, in turn.

It is important that you keep clearly in mind, as you consider this case, what are the charges in the indictment. Alleged unearned salaries are the keys to the contentions involved herein. I will, therefore, read the charges to you from the indictment.

The Grand Jury charges:

"One, in enacting Title 42 of the United States Code, Section 1751 and following, the National School Lunch Act, the Congress of the United States empowered the United

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2 States Department of Agriculture to provide food to children
3 participating in non-profit school lunch programs. Pursuant
4 to Title 42 of the United States Code, Section 1761, the
5 United States Department of Agriculture is further empowered
6 to administer Special Summer Food Services Programs for
7 children, which programs were intended to provide food
8 during the summer to children from areas in which poor
9 economic conditions exist.

10 "During July and August, 1975, the Special
11 Summer Food Services Program in New York State was admin-
12 istered by the Food and Nutrition Service of the United
13 States Department of Agriculture. The Food and Nutrition
14 Service would and did enter into agreements with private,
15 non-profit organizations designated as 'service institutions'
16 under the National School Lunch Act, that undertook to
17 operate food service programs for needy children with funds
18 provided from the United States. At all times relevant
19 herein, Youth In Government was a non-profit corporation
20 duly organized and existing under the laws of the State of
21 New York, with its principal office at 2176 Amsterdam
22 Avenue, New York, New York.' At all times relevant herein,
23 Bartholomew Buigues, the defendant, was chairman of the
24 board of Youth In Government.

25 "In July and August, 1975, Youth In Government,

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pursuant to agreement with the Food and Nutrition Service of the United States Department of Agriculture, operated a Special Summer Food Services Program for children in the Borough of Manhattan and in New York City.

"During July and August, 1975, Angelo Puig, the defendant, was employed as the director of the Special Summer Food Services Program of Youth In Government.

"During July and August, 1975, Irma Anes, the defendant, was listed on the books of Youth In Government as its administrative chief.

"During July and August, 1975, Susan Horowitz and John Sammarco, the defendants, were listed on the books of Youth In Government as site monitors.

"From on or about the first day of November, 1974, up to and including the first day of January, 1976, in the Southern District, of New York and elsewhere, Bartholomew Buigues, Angelo Puig, Irma Anes, Susan Horowitz and John Sammarco, the defendants, unlawfully, willfully and knowingly did combine, conspire, confederate and agree together and with each other and with others to the Grand Jury known and unknown, to defraud the United States and to commit offenses against the United States, to wit: violations of Title 18 of the United States Code, Section 287.

"It was part of said conspiracy that the defendants

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would and did agree to defraud the United States and the department and agency thereof, to wit: the United States Department of Agriculture, by causing the United States Department of Agriculture to reimburse Youth In Government for work supposedly performed by certain of its employees in the Special Summer Food Services Program, whereas, in truth and in fact, said employees performed little or no work and were not entitled to the salaries paid them.

"It was further part of said conspiracy that the defendants would and did make and present to the United States Department of Agriculture, a department and agency of the United States, claims upon and against the United States, to wit: Food and Nutrition Service, reimbursement vouchers, knowing such claims to be false, fictitious and fraudulent.

"Among the means by which the defendants would and did carry out the conspiracy were the following:

"In June, 1975, Bartholomew Buigues, the defendant, would and did hire Irma Anes, the defendant, as administrative chief of the Special Summer Food Services Program, at a salary of \$200 a week.

"In June, 1975, Bartholomew Buigues, the defendant, would and did hire Susan Horowitz and John Sammarco, the defendants, as site monitors of Youth In Government Special

Summer Food Services Program at salaries of \$110 a week.

"While supposedly working as administrative chief of the Special Summer Food Services Program, Irma Anes, the defendant, would and did work full-time at Querer, Inc., a day care center located at 391 East 149 Street, Bronx, New York, while supposedly working as a site monitor for the Special Summer Food Services Program.

"Susan Horowitz, the defendant, would and did work full-time at Arawak Consulting Corporation, 210 East 86 Street, New York, New York, at an annual salary of \$12,000 per year.

"Although listed as employees of Youth In Government, John Sammarco, Irma Anes and Susan Horowitz, the defendants, would and did fail to report regularly at their jobs in the Special Summer Food Services Program.

"In July and August, 1975, Bartholomew Buigues and Angelo Puig, the defendants, although aware that John Sammarco, Irma Anes and Susan Horowitz, the defendants, were not working regularly in the Special Summer Food Services Program, would and did cause salary checks to be issued weekly to these individuals.

"In July and August, 1975, Bartholomew Buigues and Angelo Puig, the defendants, would and did cause a payroll record book to be kept, listing the wages and hours of

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the Special Summer Food Services Program, in which book it was recorded that John Sammarco, Irma Anes and Susan Horowitz each worked seven hours per day, five days per week, for the duration of the Special Summer Food Services Program.

"In August, 1975, Youth In Government would and did file claims with the United States Department of Agriculture for expenses incurred in operating its Special Summer Food Services Program, which expenses included the salaries of employees."

The indictment, then, contains a recitation of what is known as "overt acts," which I will read to you a little later in these instructions.

I have read to you Count 1, thus far. Counts 2 and 3 read as follows:

The Grand Jury further charges:

"Each and every allegation of the introduction of this indictment is hereby repeated, realleged and incorporated by reference in each of Counts 2 and 3 of this indictment as though fully set forth therein.

"On or about the dates hereinafter set forth in the Southern District of New York, Bartholomew Buigues, Angelo Puig, Irma Anes, Susan Horowitz and John Sammarco, the defendants, unlawfully, willfully and knowingly would and did make and present and cause to be made and presented

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to the United States Department of Agriculture, a department and agency of the United States, claims upon and against the United States, to wit: Food and Nutrition Service reimbursement vouchers, knowing such claims to be false, fictitious and fraudulent."

In Count 2, the date of that presentation was August 22, 1975, for the month covered by the voucher, July, 1975; and in Count 3, the presentation was on August 29, 1975, the month covered by that voucher, August, 1975.

As you have heard from the indictment -- and I should tell you that a separate crime or offense is charged against each of the defendants in each of the three counts of the indictment -- each offense and the evidence pertaining to it should be considered separately by the jury. The fact you may find all or some of the accused guilty or not guilty of one of the offenses charged, should not control your verdict as to any other offense charged against any of the defendants. It is your duty to give separate personal consideration to the case of each individual defendant. When you do so, you should analyze what the evidence in the case shows with respect to that individual, leaving out of consideration, entirely, any evidence omitted solely against some other defendant or defendants. Each defendant is entitled to have his or her case determined from evidence

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2 as to his or her own acts and statements and conduct, and
3 any other evidence in the case which may be applicable to
4 him or to her.

5 Now, in more detail, I turn to the first count,
6 which is the so-called "conspiracy count."

7 The first count of this indictment is a conspiracy
8 count. Before you may convict any defendant under this
9 count, the following essential elements must be established
10 beyond a reasonable doubt by the Government:

11 First, you must be satisfied that the conspiracy
12 charged did in fact exist. That is, that sometime between
13 November 1, 1974 and January 1, 1976, a scheme, an agreement
14 existed between defendants on trial and any other co-conspir-
15 ator, whether or not on trial or named in the indictment,
16 to defraud the Government and one of its agencies, by
17 claims for reimbursement of unearned salaries in the Special
18 Food Services Program.

19 Second, the Government must establish a specific
20 intent of the defendant under consideration to violate the
21 substantive statute; that is, the law that I have read to
22 you that applied; that is, to defraud the United States
23 or to submit to the United States Department of Agriculture,
24 false, fictitious, fraudulent claims.

25 Third, that the defendant under consideration,

1 knowingly and willfully associated himself or herself with
2 a conspiracy; and

3
4 Fourth, that one of the conspirators, anyone,
5 knowingly committed at least one or more of the overt acts
6 set forth in the indictment at or about the time and place
7 alleged.

8 You must first consider whether, in fact, the
9 scheme or conspiracy charged in this indictment existed.
10 What is a conspiracy? A conspiracy is a combination or
11 scheme or agreement of two or more persons, by concerted
12 action, to accomplish a criminal or unlawful purpose or
13 some purpose not in itself criminal or unlawful, by criminal
14 or unlawful means.

15 The gist of the crime of conspiracy is the
16 unlawful combination or agreement ~~scheme~~, to violate
17 the law. Whether or not the defendant accomplished what it
18 is alleged the defendant conspired to do, is immaterial to
19 the question of guilt or innocence of conspiracy. The
20 crime of conspiracy relates to scheming to do the unlawful
21 thing.

22 A conspiracy has sometimes been called "a partner-
23 ship in criminal purpose in which each member becomes the
24 agent of every other member." However, to establish a
25 conspiracy, the Government is not required to show that two

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2 or more persons sat around a table and entered into a solemn
3 compact, orally or in writing, stating that they have
4 formed a conspiracy to violate the law, setting forth
5 details of the plan, the means by which the unlawful project
6 is to be carried out, or the part to be played by each
7 conspirator. Indeed, it would be extraordinary if there
8 were such a formal document or specific oral agreement.
9 Your common sense will tell you that, when people in fact
10 undertake to enter into a criminal conspiracy, much is
11 left to the unexpressed understanding.

12 Conspirators usually do not reduce their agree-
13 ment to writing or acknowledge them before a notary public,
14 nor do they publicly broadcast their plans. From its very
15 nature, a conspiracy is almost always characterized by
16 secrecy, rendering detection difficult.

17 Thus, it is sufficient if two or more persons
18 in any manner, through any contrivance impliedly or tacitly,
19 come to a common understanding to violate the law. Express
20 language or specific words are not required to indicate
21 assent or attachment to a conspiracy. On the other hand,
22 proof concerning the accomplishment of the object of a
23 conspiracy may be the most persuasive evidence of the
24 actual existence of the conspiracy itself; and to simplify
25 this a bit more, success of the venture is the best proof

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of the agreement.

In determining whether there has been an unlawful scheme or agreement, you may judge acts and conduct of the alleged members of the conspiracy which are done to carry out an apparent criminal purpose. The old adage, "Actions speak louder than words," is applicable here. Usually, the only evidence available is that of disconnected acts on the part of the alleged individual conspirators, which acts, however, when taken together in connection with each other, and with the reasonable inferences flowing therefrom, show a conspiracy or agreement to secure a particular result as satisfactorily and conclusively as more direct proof.

If, upon such consideration of all the evidence, direct and circumstantial, you find beyond a reasonable doubt that the minds of the alleged conspirators met in an understanding way and that they agreed, as I have explained a conspiratorial agreement to you, to work together in furtherance of the unlawful scheme alleged in the indictment, then proof of the existence of a conspiracy has been established.

In this connection, it is not necessary for the Government to prove the success, nor completion of the object of the conspiracy. As the conspiracy is basically

1 rkln 12

2 the agreement to violate the law, it may exist even though
3 the final objectives were never accomplished.

4 The period of time embraced by the indictment
5 for the existence of the alleged conspiracy runs from on
6 or about November 1, 1974 to January 1, 1976. It is not
7 necessary for the Government to prove that the conspiracy
8 started and ended on those specific days. It is sufficient
9 if you find that, in fact, the conspiracy was formed and
10 that it existed for some substantial time within the period
11 set forth in the indictment and that any one of the several
12 acts mentioned in the overt act section of the indictment
13 was committed during that period.

14 The indictment charges that the conspiracy in
15 question had two unlawful objects or goals:

16 The first was to defraud the United States and
17 one of its departments, the Department of Agriculture, by
18 causing that department to reimburse an organization called
19 "Youth In Government" for work supposedly performed by
20 its employees that had not been in fact performed.

21 The second object of the conspiracy, charged in
22 the indictment, was to violate Title 18 of the United
23 States Code, Section 287, which makes a crime the filing
24 of false, fictitious and fraudulent claims against the
25 United States.

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It is not necessary that the Government prove that there was a conspiracy to accomplish both of those objects. The Government will have sustained its burden of proof on the conspiracy count if it has proved beyond a reasonable doubt that there was a conspiracy to accomplish at least one of these illegal goals.

In order to find there was a conspiracy to defraud the United States, you may, but need not find that the Government lost money or was intended to lose money as the result of the conspiracy. Defrauding in this connection means interfering with, or obstructing one of the lawful functions of the United States Government -- in this case, the function of the United States Department of Agriculture, in administering the Special Summer Food Services Program-- by deceit, craft or trickery or by means that are dishonest. A conspiracy that included as one of its goals, submission of fraudulent or false information to a department of the United States, such as the Department of Agriculture, in a matter within its jurisdiction, would be a conspiracy to defraud the United States.

Once satisfied that the conspiracy charged existed, you must ask yourself who its members were. In deciding whether a defendant was a member of the conspiracy, you should consider whether on all the evidence, the

defendant knowingly and purposely entered the conspiracy.

In determining whether a defendant became a member of the conspiracy, you must determine not only whether he participated in it, but whether he did so with knowledge of its unlawful purpose. Did he join with an awareness of at least some of the basic aims and purposes of the conspiracy? Knowledge may be inferred from a defendant's conduct, from his or her acts, from his or her statements and from all the surrounding circumstances. It is not necessary that the defendant be fully informed as to the details of the scope of the conspiracy in order to justify the inference of knowledge on his or her part. To have guilty knowledge, the defendant need not know the full extent of the conspiracy and all of its activities and actors.

I want to caution you that a defendant's mere association with one or more of the conspirators does not make one a member of the conspiracy, nor is knowledge without participation sufficient. What is necessary is that a defendant participate at some time in the course of the scheme, not necessarily from the inception, but any time during its course, with knowledge of at least some of the purposes of the conspiracy and with specific intent to aid and participate in the accomplishment of those unlawful

1 rklm 15

2 ends.

3 Once you have found a conspiracy to exist and a
4 defendant to have knowingly participated in it, the extent
5 of his or her participation has no bearing on the guilt
6 or innocence of that defendant. The guilt of a conspirator
7 is not measured by the extent or duration of his or her
8 participation. Even if a defendant participated in it to
9 a degree more limited than that of another alleged co-
10 conspirator, that defendant is equally culpable so long as
11 that defendant was in fact a conspirator.

12 As I have already mentioned, the fourth element
13 of the crime of conspiracy is that an overt act, to effect
14 the objective of the conspiracy, be committed by at least
15 one of the co-conspirators.

16 An overt act is any step, action or conduct out
17 in the open. That is what overt means; acts which are taken
18 to achieve or further the objective of the conspiracy.

19 The alleged overt acts as charged in the indict-
20 ment are as follows:

21 In furtherance of said conspiracy and to effect
22 the objects thereof, the following overt acts, among others,
23 were committed in the Southern District of New York:

24 1: In or about January, 1975, Bartholomew
25 Buiges and Angelo Puig, the defendants, held a meeting at

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1920 McGraw Avenue, Bronx, New York, to organize a Special Summer Food Services Program for Youth In Government.

Another overt act marked "2," in or about May, 1975, Bartholomew Buigues and Angelo Puig, the defendants, held a meeting at The Latin Beat, 508 Van Nest Avenue, Bronx, New York, to organize further the Special Summer Food Services Program in Youth In Government.

3. On or about the 27th day of June, 1975, Susan Horowitz filled out an application for employment in the Special Summer Food Services Program of Youth In Government.

4. From on or about the 7th day of July, 1975 and continuously thereafter up to and including the 16th day of April, 1976, Susan Horowitz, the defendant, was employed as a staff associate at Arawak Consulting Corporation, 210 East 86 Street, New York.

5. During July and August, 1975, Irma Anes, the defendant, was employed as a bookkeeper and administrative assistant at Querer, Inc., 391 East 149 Street, Bronx, New York.

6. During July and August, 1975, Bartholomew Buigues and Angelo Puig, the defendants, wrote weekly salary checks to Irma Anes, John Sammarco and Susan Horowitz.

7. In July and August, 1975, Irma Anes, the defendant,

1 rkln 17

2 made entries in the payroll book of Youth In Government,
3 which stated that Irma Anes, Susan Horowitz and John
4 Sammarco had each worked seven hours per day, five days
5 per for eight consecutive weeks.

6 8. On or about the 22nd day of August, 1975,
7 Irma Anes, the defendant, filed with the United States
8 Department of Agriculture a Food and Nutrition Service
9 reimbursement voucher for the Special Summer Food Services
10 Program of Youth In Government for July, 1975.

11 9. On or about the 29th day of August, 1975,
12 Irma Anes, the defendant, filed with the United States
13 Department of Agriculture a Food and Nutrition Service
14 reimbursement voucher for the Special Summer Food Services
15 Program of Youth In Government for August, 1975.

16 10. In or about August, 1975, Youth In Government
17 received from the United States Department of Agriculture
18 \$142,747 in payment of its claim for the expenses of the
19 Special Summer Food Services Program for July, 1975.

20 As I have already indicated, it is not necessary
21 for the Government to prove that each member of the conspiracy
22 committed or participated in any particular overt act of
23 the ten which I have read to you.

24 Also, the Government is not required to prove
25 every one of the ten overt acts charged. It is sufficient

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if the Government proves the commission of at least one, any one of the acts alleged to have occurred charged as overt acts, at or about the time alleged.

When people enter into a conspiracy to accomplish an unlawful end, they become agents for one another in carrying out the conspiracy. Hence, the acts or declarations of one, in the course of the conspiracy and in furtherance of the common purposes, are deemed to be the acts of all, and all are responsible for such acts.

Accordingly, if you find, in accordance with these instructions, that the alleged conspiracy existed and the defendant or alleged co-conspirators were participants in it, then acts done and statements and declarations made in furtherance of the conspiracy by the persons found by you to have been members of the conspiracy, may be considered against the defendant whom you find was a member, even though such acts or deliberations were made in the absence and without the knowledge of that defendant.

It is important to note that this principle applies only to the acts and declarations done or made during the continuance of the conspiracy and in furtherance thereof; that is, to carry out an unlawful objective or purpose of the conspiracy. It does not apply to acts or declarations which do not have these characteristics.

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The defendants are charged in Counts 2 and 3 with the making and presenting of false claims against the United States. Count 1 is scheming to do so. Counts 2 and 3 were the actual making and presenting of false claims against the United States. These Counts 2 and 3 charge a violation of Title 18, United States Code, Section 287, which reads as follows:

"Whoever makes or presents to any person or officer of the United States or to any department or agency thereof any claim upon or against the United States or any department or agency thereof, knowing such claim false, fictitious or fraudulent, commits a crime."

Before you may convict any defendant on either, Count 2 or 3, you must be satisfied beyond a reasonable doubt of each of the following essential elements as to him or her:

1. That on or about the date set forth in each count, the defendant whom you are considering made or presented or aided and abetted another or others in the making or presentation of a claim against the United States to a department or agency thereof.

2. That the claim was false, fictitious or fraudulent.

3. That the defendant you are considering knew

1 rklm 20

2 the claim to be false, fictitious or fraudulent.

3 4. That the defendant acted knowingly, willfully
4 and unlawfully.

5 With respect to the first essential element, that
6 the defendant made or presented a claim against the United
7 States through a department or agency of the United States,
8 the language describing this element is largely self-
9 explanatory. To make or to present is simply to cause to
10 be filed or to file a claim in a manner that would normally
11 cause the department or agency to act on that claim.

12 The claims referred to in Counts 2 and 3 are
13 Food and Nutrition Services reimbursement vouchers. You
14 have heard testimony that these vouchers are the means by
15 which sponsors participating in the Special Summer Food
16 Services Program seek reimbursement for their expenses
17 incurred in running the program. Although there appears
18 to be no dispute on this point, you must nevertheless find
19 beyond a reasonable doubt that these vouchers are claims
20 against the United States.

21 You must also find that these claims were made
22 or presented to an agent or department of the United
23 States. I charge you as a matter of law that the United
24 States Department of Agriculture is a department and agency
25 of the United States.

rkln 21

In order to convict a defendant under either Count 2 or Count 3, you must find that the Food and Nutrition Service reimbursement vouchers were false, fictitious or fraudulent, and that the defendant you are considering knew that to be so.

The word "false," as used in the indictment, means the claim was untrue when made, and was then known to be untrue by the person making it or causing it to be made.

The word "fictitious" means that the claim contained matters that were contrived, invented or imaginary.

The word "fraudulent" means that the claim was falsely made and with the purpose of intent to deceive.

Before you can convict any defendant of either count, you must find beyond a reasonable doubt that he or she acted knowingly and willfully, with the specific intent to violate the law.

Now, an act is done knowingly if it was done voluntarily and purposely and not because of mistake, accident, mere negligence or any other innocent reason.

An act is willful if it is done knowingly, willfully, and with a bad motive or purpose.

To establish specific intent, the Government must prove that the defendant knowingly did an act that the

1 rklm 22

2 law forbids or knowingly failed to do any act which the law
3 requires, purposely intending to violate the law.

4 Knowledge and willfullness of a defendant need
5 not be proved by direct witnesses. Like any other facts in
6 issue, it may be established by circumstantial evidence.

7 Here, as in other phases of the case, the signifi-
8 cant fact is the defendant's state of mind. It is obviously
9 impossible to prove the operation of a defendant's mind
10 because you can't look into a person's mind and see what
11 his intentions are or were, but the proof of the circum-
12 stances surrounding the transaction may well supply an
13 adequate and convincing basis or a finding that the defendant
14 acted willfully.

15 The actions of a person must be set in their time
16 and place, just as the full meaning of a word is commonly
17 understood only in its relation to other words in a sentence
18 or its context. So, the meaning of a particular act or
19 conduct may depend on the circumstances in which it is
20 found or surrounding it.

21 In determining this issue, you are entitled to
22 consider any statements made and acts done or omitted by
23 the defendant and all facts and circumstances in evidence
24 which may aid you in determining his or her state of mind.

25 With respect to Counts 2 and 3, you will recall

1 rklm 23

2 that I had used the term "aiding and abetting." It is not
3 necessary that the Government prove that each defendant
4 personally did each act charged. For example, it is
5 unnecessary to sustain a conviction under Count 2 or Count
6 3 to show that a defendant actually participated personally
7 in the preparation of the reimbursement vouchers or in the
8 filing of them with the Department of Agriculture. A
9 Federal statute provides:

10 "Whoever commits an offense against the United
11 States, or aids, abets, counsels, commands, induces or
12 procures its commission, is guilty of a crime."

13 While there is no precise rule as to what acts
14 constitute aiding and abetting, it is enough that a defend-
15 ant in some manner associated himself or herself with the
16 illegal venture; that such defendant participated in it,
17 as something that he or she wished to bring about, or that
18 he or she sought by his or her actions to make it succeed.

19 One who aids or abets the commission of a crime
20 is equally guilty as the person who actually and physically
21 committed it.

22 It is not sufficient to show mere knowledge of
23 a false filing to find that a defendant was an aider and
24 abettor. You must find that a defendant knowingly and
25 intentionally participated in activities such as the receipt

1 rk1m 23

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20 is equally guilty as the person who actually and physically
21 committed it.

22 It is not sufficient to show mere knowledge of
23 a false filing to find that a defendant was an aider and
24 abettor. You must find that a defendant knowingly and
25 intentionally participated in activities such as the receipt

of money consciously taken for work not performed which, when included on the claims filed with the Government, caused the reimbursement vouchers to be inflated, false, fictitious and fraudulent.

If you find such participation and such receipt of unearned salaries by a defendant with knowledge and intent, that payment or reimbursement would be made or sought from the Government or its agency through reimbursement vouchers which thus were inflated, false, fictitious and fraudulent, you may find that defendant guilty, as an aider and abettor of the making and filing of the false claims.

A person may be guilty of causing a false claim to be presented to the United States, even though he uses an intermediary, innocent or not, to make and actually pass on the claim to the United States.

I now want to turn to some general rules applicable to trials, criminal trials, and the trial of this case:

In order to return a verdict of "not guilty" or "guilty" as to any defendant on any of the three counts in this case, each juror must agree thereto. Such a verdict must be unanimous on the count which you are considering and as to the defendant you are considering, and must represent each juror's individual judgment.

1 It is your exclusive function to determine the
2 facts on the basis of your consideration of the evidence.
3 On the other hand, it is your duty to accept my instructions
4 as to what the law is, and that must be followed in this
5 case. You may not disregard the law or attempt to mitigate
6 it or rewrite it. Applying these instructions on the law
7 to the facts as you find them, you will decide whether or
8 not the defendant on trial before you is guilty of the
9 charges that have been made against him or her or any of
10 them.
11

12 Your recollection of the facts is what counts
13 here and not the recollection of counsel or even my recollec-
14 tion. It is for you to determine the weight you will give
15 to the evidence, the credibility you will extend to the
16 witnesses who testified and the reasonable inferences that
17 are to be drawn from the evidence that has been received.

18 As I have indicated earlier, an indictment defines
19 the charges against the defendant as to which the evidence
20 at the trial must be addressed. An indictment is not
21 evidence that a crime has been committed and no inference
22 of any kind may be drawn from its existence.

23 Each defendant pleaded "not guilty" to the
24 indictment. That means that the Government has the burden
25 of proving guilt beyond a reasonable doubt with respect to

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that defendant as to each element of the claims that that defendant is accused of having committed. The defendant does not have to prove that he or she is not guilty. He or she does not have to submit any evidence on the subject of his or her innocence or any evidence at all if he or she doesn't want to. A defendant is presumed to be innocent under our concept of the law and that presumption continues throughout the trial and through your deliberations. It is only overcome if and when you have determined on the basis of your resolution of the facts, that guilt was established beyond a reasonable doubt on each element of the crime charged that you are considering.

By "reasonable doubt," we just do not mean mathematical certainty or proof beyond all possible doubt. We mean a doubt which is sufficient to cause a prudent person to hesitate to act in a matter of importance to himself or herself. If the evidence, which you believe is such as would induce a prudent person to act without reservation in a matter of importance to himself or herself, then you may say, you have been convinced beyond a reasonable doubt. A reasonable doubt is not a speculative doubt. It is not caprice or whim. It is not a guess. It must be, as the words used say, a reasonable doubt.

If, on the other hand, your mind is wavering

or uncertain to the point where you have a doubt which would cause a prudent person to hesitate in a matter of importance to him or her, then you have not been convinced beyond a reasonable doubt.

In this case, the evidence produced has been both of direct and indirect or circumstantial character. The Government contends that its evidence establishes each defendant's guilt on each charge beyond a reasonable doubt. Each defendant contends that no evidence has overcome the presumption of his or her innocence and, at least, there is a reasonable doubt as to his or her guilt.

You will apply to all the evidence the same standard of proof to satisfy yourself of the guilt of the defendant beyond a reasonable doubt or else you must acquit that defendant. You must make your own evaluation of the evidence, including the testimony given by each of the witnesses, and determine the credibility which you choose to give to such evidence.

In weighing the testimony of witnesses, you may consider their relationship, if any, to the parties involved, namely, to the Government or to the defendant, and any bias against or interest in the parties or in the outcome of the case; the witness' manner while he or she was testifying, that is, the witness' candor, intelligence, whether the

1 rklm 28

2 witness equivocated or whether the witness was frank and
3 straightforward; the extent to which the witness has been
4 corroborated or contradicted by other credible evidence or
5 circumstances or inconsistencies in the testimony.

6 Interest, as you know, creates a motive for
7 falsely testifying. The greater the interest, the stronger
8 the motive, and the defendant's interest in the result of
9 a trial is of a character possessed by no other witness.

10 If you believe a witness has willfully testified
11 falsely before you, you are privileged to disregard his
12 or her testimony or you don't have to. A man or woman may be
13 lying about part of what he or she says and may be telling
14 the truth about other parts. It is for you to decide, after
15 you have scrutinized the evidence and weighed the demeanor
16 of the witnesses.

17 In appraising any defendant's credibility, you
18 may take his or her interest in the outcome of the situation.
19 However, it by no means follows that simply because a
20 person has a vital interest in the end result, that he or
21 she is not capable of telling a truthful and straightforward
22 story. It is for you to decide to what extent, if at all,
23 the interest of a defendant has colored that defendant's
24 testimony.

25 You have heard testimony that the defendants,

1 rklm 29

2 John Sammarco and Angelo Puig, made certain statements to
3 Government agents. If you find that either of these defend-
4 ants did make the statements accorded to them, then
5 may give those statements such weight as you believe they
6 deserve under all of the facts and circumstances which
7 were brought out in the evidence.

8 There has been testimony that the defendants,
9 John Sammarco and Angelo Puig, also made a number of
10 statements to Government agents tending to show their
11 innocence. There has also been testimony that these state-
12 ments were false.

13 I charge you that exculpatory statements, state-
14 ments to excuse one or exonerate one, when shown to be
15 false, are circumstantial evidence of guilty consciousness
16 and have independent probative force and are to be considered
17 along with all the other facts and circumstances in evidence
18 in respect to that defendant.

19 Certain evidence was given to you of an alleged
20 incident allegedly pertaining to Mr. Puig and of an alleged
21 incident allegedly pertaining to Mr. Buigues, both referred
22 to as "threats," solely for identification of the subject.
23 That testimony has no relevance to any defendant except,
24 respectively, to Mr. Puig and to Mr. Buigues, and was
25 admitted solely against the defendant named in such evidence

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2 to be considered solely as against him, together with all
3 the other facts and circumstances and evidence relating
4 to that defendant.

5 If you credit the testimony as to such an incident,
6 it may, if you decide it had that effect, be evidence of
7 a consciousness of guilt, to be considered together with
8 all the other facts and circumstances and evidence, solely
9 for that purpose and solely in relation only to the particular
10 defendant referred to.

11 The defendants Horowitz, Puig and Buigues, you
12 will recall, introduced evidence tending to establish their
13 good reputation in their community and profession, prior
14 to and subsequent to the indictment in this case. Such
15 evidence may indicate to you that it is improbable that
16 a person of good character would commit the crime charged
17 here. Therefore, the jury should consider this evidence
18 along with all the other evidence in the case, in determining
19 the guilt or non-guilt of the defendants.

20 The circumstances may be such that evidence of
21 good character alone may create a reasonable doubt of the
22 defendant's guilt, although without it, the other evidence
23 may be convincing. However, evidence of good reputation
24 should not constitute an excuse to acquit the defendant if
25 the jury, after weighing all the evidence including the

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2 evidence of good character, is convinced beyond a reasonable
3 doubt that the defendant is guilty of the crime charged.

4 The law recognizes two types of evidence: direct
5 and circumstantial, either of which may be sufficient to
6 convince the jury, providing all the evidence is proved
7 beyond a reasonable doubt.

8 Direct evidence, of course, is evidence given by
9 a witness who is present at a conversation or the commission
10 of an act and testifies as to what he or she saw or what
11 he or she heard or discovered, what he or she knows of her
12 own or his own knowledge; something which comes to him or
13 her by virtue of the senses of sight or sound or smell or
14 touch.

15 Circumstantial evidence is, as most of you know,
16 evidence that tends to prove a disputed fact by proof of
17 other facts in evidence, which has a logical tendency to
18 lead one's mind to conclude that a fact in issue actually
19 exists. Circumstantial evidence should not be given any
20 less weight because it is circumstantial rather than direct.

21 A convenient illustration of circumstantial
22 evidence that I give to juries is this:

23 Suppose, at the time you came into court this
24 morning the sun was shining and there were no clouds in the
25 sky and when you came into this trial courtroom the shades

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1
2 were drawn and the blinds were down, so you couldn't see
3 outside, and assume you hadn't been outside since you came
4 in, and pretty soon somebody walked through that door into
5 the courtroom with a dripping umbrella and raincoat. When
6 you left outside it was clear, but when this person came in
7 with the dripping umbrella and raincoat, something may have
8 happened outside. You would be entitled to infer from the
9 circumstances, that there is a dripping umbrella and rain-
10 coat and that it is raining outside, even though you do not
11 see the rain outside. Thus, circumstantially, you infer
12 from one fact, the fact being the dripping raincoat and
13 umbrella, some other manner, that is, that it is raining
14 outside.

15 Under your oath, you can't allow consideration
16 of the punishment that might be inflicted upon a defendant
17 to influence your judgment in any way or in any sense
18 enter into your deliberation. The decision as to what type
19 of sentence, if any, should be imposed, is solely my
20 responsibility. That rests exclusively on me in the event
21 of a conviction. Your function is to weigh the evidence
22 in the case and to determine whether the defendant engaged
23 in criminal conduct described in the statutes and whether
24 he or she is guilty or not guilty of a particular count
25 you are considering. Your decision must be based solely on

1 rklm 33

2 the evidence and the law and you must not be confused by
3 any argument which takes you away from what the case
4 before you is. You must not be influenced by any assumptions,
5 conjecture or sympathy in the case, either for the defend-
6 ant or any member of his or her family or otherwise.

7 In short, you are expected to use your common
8 sense and general experience in evaluating the evidence.

9 Your verdict in this case, when you get ready to
10 report it, will be on each count and with respect to each
11 defendant, separately, and it will be either "guilty" or
12 "not guilty"; and your verdict will be announced by Mr.
13 Johnson, who sits in the first seat, and who will act as
14 your spokesman. Your spokesman will be provided with a
15 copy of the indictment and with pencil and paper, should
16 you wish to communicate with the Court. Please do not
17 communicate with anyone, even me, except in writing, and
18 have the writing signed or initialled by your spokesman with
19 his name or initials; and do not communicate with anyone,
20 not even me, on how you stand, unless it is to say that you
21 are unanimous on the person and the count mentioned.

22 If you desire any of the exhibits, these will be
23 sent to you in the jury room upon request. If you want
24 any testimony read, that can be done also. It isn't easy
25 to find the testimony in those stenotype notes, so the more

specific you are, the quicker we can accommodate any request you do make.

I have now concluded my instructions, but I want to take a moment to talk to the lawyers. They may wish to call to my attention something that I may have overlooked or on something as to which I have misspoken, so if you will just relax in your seats for a moment, I will talk to them and come back to you.

(At the side bar.)

THE COURT: Are there any exceptions or requests on the part of the Government?

MR. EPSTEIN: There are none.

THE COURT: Any exceptions or requests on the part of your clients, Mr. Hammer?

MR. HAMMER: No, sir.

THE COURT: Are there any exceptions or requests on the part of your client, Mr. Honig?

MR. HONIG: There are no exceptions or requests.

THE COURT: Are there any exceptions or requests on the part of your client, Mr. Flynn?

MR. FLYNN: Yes, your Honor. I respectfully except to the Court's charge on the issue of specific intent; and as I read it, it did not cover the issue.

I respectfully except to taking exception in the

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No. 77-1249

UNITED STATES OF AMERICA,

Appellee,

- against -

BARTHOLEMEW BUIGUES, ANGELO PUIG,
IRMA ANES, SUSAN HOROWITZ and
JOHN SAMMARCO,

Defendant-Appellants,

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)

ss.:

COUNTY OF NEW YORK)

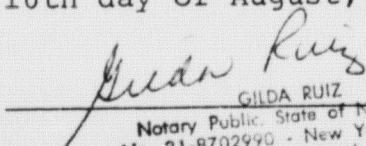
CHARLES WALKER, being duly sworn, states:

I am over the age of eighteen years and reside at 7 West 14th Street, New York, N.Y. 10013. I am not a party to this action. On August 10, 1977, I served the within Appendix for Appellant Angelo Puig (unrevised) on the United States Attorney for the Southern District of New York, United States Courthouse, Manhattan, New York, by depositing copies in a postpaid, properly addressed envelope in an official depository of the United States Post Office by reason of the fact that the original eight copies served were deemed by the clerk to be illegible.


CHARLES WALKER

Sworn to before me this

10th day of August, 1977.


GILDA RUIZ
Notary Public, State of New York
No. 31-8702990 - New York County
Commission Expires March 30, 1978

